

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CHARLES W. TRACY)	
Claimant)	
VS.)	
)	Docket No. 225,817
CENTRAL ELECTRICAL REBUILDERS)	
Respondent)	
AND)	
)	
UNKNOWN)	
Insurance Carrier)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

The Kansas Workers Compensation Fund appeals from the Order of Administrative Law Judge Jon L. Frobish dated April 2, 1998, wherein the Administrative Law Judge re-implead the Workers Compensation Fund and assessed all liability for paying medical bills to date and providing future medical treatment to the Workers Compensation Fund due to respondent's refusal to recognize the orders of the Court. The Order of the Administrative Law Judge further referred this matter to the Fraud and Abuse Unit of the Workers Compensation Division because of respondent's failure to recognize the orders of the Court.

ISSUES

- (1) Did the Administrative Law Judge exceed his jurisdiction in ordering the Workers Compensation Fund (Fund) to pay for benefits originally assessed against the respondent after a specific finding by the Administrative Law Judge that the respondent was solvent and capable of paying compensation?
- (2) Is there authority to support the Order of the Administrative Law Judge assessing liability against the Fund in the place of a solvent employer who refuses to abide by the orders of the Court?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

This matter first came before the Administrative Law Judge at a preliminary hearing on October 2, 1997, at which time the Administrative Law Judge found claimant had proven accidental injury arising out of and in the course of his employment with respondent after being struck in the mouth by a compressed air hose resulting in a need for substantial dental work. At that time the respondent's co-owner, Darrell K. Hollis, testified that he was solvent and capable of paying the workers compensation benefits even though no insurance company was present at the hearing. After respondent's admission of solvency and ability to pay, the Administrative Law Judge dismissed the Fund from the proceedings. There was no appeal taken from this order.

On December 30, 1997, the Administrative Law Judge issued an additional order authorizing R. P. Lansdowne, D.D.S., as the treating physician for all necessary treatments.

On January 6, 1998, claimant issued a letter demanding payment for the ordered medical treatment and requesting penalties under K.S.A. 44-512a for payments not provided forthwith.

On March 9, 1998, claimant filed its Motion for Penalties due to respondent's refusal and failure to pay for the medical treatment.

On March 10, 1998, respondent's attorney filed a Motion to Withdraw citing a lack of cooperation and lack of communication between the attorney and the respondent. On March 17, 1998, the Administrative Law Judge granted the motion and dismissed respondent's attorney. The Administrative Law Judge further assessed penalties against the respondent in the amount of \$394.90 for failure to pay for the ordered medical treatment.

On March 20, 1998, claimant filed a Motion to reinstate the Fund due to respondent's failure to pay, respond, communicate, or otherwise follow the previous orders of the Administrative Law Judge. Respondent failed to respond to the orders of the Court, failed to communicate with his attorney, and failed to appear at hearings even though provided appropriate notice.

On April 2, 1998, the Administrative Law Judge issued the order which is currently before the Board granting the claimant's request to reinstate the Fund and referring the matter of respondent's refusal to pay to Fraud and Abuse.

The 1997 Kansas Legislature amended K.S.A. 1996 Supp. 44-551(b)(1) effective July 1, 1997, from a review by the Appeals Board of "[a]ll acts, findings, awards, decisions, rulings or modifications of findings or awards made by an administrative law judge" to the

review of “[a]ll final orders, awards, modifications of awards, or preliminary awards under K.S.A. 44-534a and amendments thereto made by an administrative law judge”

In reviewing the Order of the Administrative Law Judge, the Appeals Board finds this is not a final order, award, modification of award, or preliminary award under K.S.A. 1997 Supp. 44-534a but is, instead, an interlocutory order made by the Administrative Law Judge during the litigation of a workers compensation case. The Administrative Law Judge has the specific jurisdiction to award temporary total disability compensation and medical treatment under K.S.A. 1997 Supp 44-534a. The Administrative Law Judge further has jurisdiction to assess liability against the Fund in certain instances when a respondent is unable or unwilling to pay compensation. K.S.A. 44-532a(b) grants a cause of action to the Commissioner of Insurance against the employer to recover whatever funds may be expended by the Fund during this litigation. The Appeals Board also notes that the Administrative Law Judge properly referred this matter to the Fraud and Abuse Section of the Workers Compensation Division for consideration of the respondent’s action.

The Appeals Board finds that the actions of the Administrative Law Judge are well within his jurisdiction and authority and the Appeals Board lacks the jurisdiction to review this Order until such time as it is contained in a final order or award.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Jon L. Frobish dated April 2, 1998, remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of June 1998.

BOARD MEMBER

c: W. Walter Craig, Wichita, KS
E. L. Lee Kinch, Wichita, KS
Jon L. Frobish, Administrative Law Judge
Darrell K. Hollis, Wichita, KS
Philip S. Harness, Director